

# 立法會 *Legislative Council*

LC Paper No. CROP 36/12-13

Ref: CB(4)/CROP/3/79

## **Paper for the House Committee**

### **Committee on Rules of Procedure**

#### **Role of the Member in charge of a bill in the relevant Bills Committee**

#### **Purpose**

This paper reports on the study of the Committee on Rules of Procedure ("CRoP") on issues relating to the role of the Member in charge of a bill<sup>1</sup> in the relevant Bills Committee.

#### **Background**

2. At the meeting of the House Committee held on 26 November 2010, Members agreed to form a Bills Committee to study the University of Hong Kong (Amendment) Bill 2010 in detail. At the House Committee meeting, a total of seven Members, including Dr Hon David LI, who was the Member in charge of the bill, signified to join the Bills Committee<sup>2</sup>. A Member raised the issue of whether the Member in charge of a bill could join the Bills Committee which scrutinized that bill. After discussion, Members agreed to refer the issue

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<sup>1</sup> Rule 51(8) of the Rules of Procedure provides that "[a] Member presenting a bill shall be known throughout the subsequent proceedings on the bill as the Member in charge of the bill. In the case of a bill introduced jointly by more than one Member, these Members shall designate among themselves a Member as the Member in charge of the bill at the time of presenting the bill and the Member so designated shall signify himself as such in the notice for presentation".

<sup>2</sup> Ultimately, a total of 11 Members joined the Bills Committee.

to CRoP for consideration. An extract of the relevant minutes of the House Committee meeting on 26 November 2010 is in **Appendix I**.

## **Relevant rules and practices**

### Legislative process of Members' bills

3. Under Article 74 of the Basic Law, bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by Members of Legislative Council ("LegCo"). As for Members' bills relating to government policies, written consent of the Chief Executive is required before they can be introduced by Members. The requirements in Article 74 are reflected in Rule 51 (Notice of Presentation of Bills) of the Rules of Procedure ("RoP").

4. The procedure for presentation of a Member's bill is set out in **Appendix II**. After a Member's bill has been gazetted, it has to pass through three readings in LegCo before it is enacted, same as in the case of government bills. The respective motions for the Second Reading and the Third Reading of a Member's bill are moved by the Member in charge of the bill, and passage of the motions requires a simple majority vote of each of the following two groups of Members present –

- (a) Members returned by functional constituencies; and
- (b) Members returned by geographical constituencies through direct elections<sup>3</sup>.

5. After a Member's bill has been referred to the House Committee after the Second Reading under Rule 54(4) of RoP, the House Committee will decide whether a Bills Committee should be formed to scrutinize the bill<sup>4</sup>.

6. According to Rule 76(7), (9) and (10) of RoP, a Bills Committee shall consider the general merits and principles, and the detailed provisions, of the bill allocated to it; and may also consider any amendments relevant to the bill. Upon completion of scrutiny of the bill allocated to it, a Bills Committee shall report its deliberations in writing to the House Committee and then report further to the Council. While the deliberations of a Bills Committee on a bill

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<sup>3</sup> Annex II of the Basic Law and Rule 46(2) of RoP

<sup>4</sup> Rule 75(4) of RoP

may be discussed by the House Committee, such deliberations shall not be binding on any Member, whether in Council, in a committee of the whole Council or in the House Committee.

7. Bills Committees mostly proceed by obtaining information from the Administration (for government bills) or from the Member in charge of the bill and the proponent organization of the bill, if any (for Members' bills), soliciting comments and opinions from parties that may be affected by the bill, and exchange of views among members of the Bills Committee. Although the deliberations of a Bills Committee are not binding on any Member in the subsequent proceedings of the bill in the Council, such deliberations which are detailed in the Bills Committee's report serve to assist Members in preparation for those proceedings.

#### Membership and chairmanship of Bills Committees

8. Rule 76(1A) of RoP provides that "[t]he members of a Bills Committee shall be those Members (other than the President) who signify membership in accordance with procedural rules (which shall provide only for the manner and timing of such signification) decided by the House Committee". The procedural rules regarding the manner and timing of signification of membership of Bills Committee are provided in rule 21(c) and (d) of the House Rules ("HR")<sup>5</sup>. Rule 23 of HR, which is concerned with application for late membership, applies to Bills Committees.

9. Other than the aforesaid procedural rules, there is no provision in RoP or HR that imposes any restriction on Members' signification of membership of a Bills Committee. In other words, Members are allowed to join any Bills Committee if they so wish, so long as the relevant procedural rules specified in HR are complied with.

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<sup>5</sup> Rule 21(c) of HR provides that "Members may join a Bills Committee by a show of hands at the House Committee meeting at which a bill is allocated to that Bills Committee, and the Member who has the highest precedence among these Members is responsible for calling the first meeting of the Bills Committee. Members may also join a Bills Committee by submission of returns to the Secretariat by the deadline set by the clerk to the Bills Committee. Except in special circumstances, such a deadline shall normally be one clear day before the day of the first meeting of the Bills Committee". Rule 21(d) of HR provides that "a Member who joins the Council after the start of a session should signify membership for the Bills Committees of his choice within one month of the date on which he is declared elected as Member of the Council".

10. As regards chairmanship of Bills Committees, RoP and HR also do not have any provision that prevent a Member in charge of a bill from being elected as Chairman of a Bills Committee<sup>6</sup>.

11. A Member by virtue of his membership in a committee (including a Bills Committee) is entitled to participate fully in the committee's proceedings. Apart from speaking on the matters under deliberation, the Member may move motions, vote and be counted for purposes of a quorum. Restriction on the right of the Member to fully participate in the committee's proceedings only arises when the Member has a pecuniary interest in the matter under consideration by the committee. The relevant requirements for disclosure of pecuniary interest by Members and not voting or withdrawal in case of direct pecuniary interest are provided in Rules 83A and 84 of RoP.

12. Since the First LegCo, a total of 30 Members' bills have been introduced into LegCo, and six of these bills had been scrutinized by the respective Bills Committees. All of the Members in charge of the six bills joined the respective Bills Committees and served as a member (but not the Chairman or Deputy Chairman) of the Bills Committees. Relevant details are set out in **Appendix III**.

#### Role of Member in charge of a bill in the relevant Bills Committee

13. In the six Bills Committees on Members' bills formed since the First LegCo, the respective Member in charge, together with the proponent organization of the bill<sup>7</sup>, would brief the Bills Committee on the objective and the provisions of the bill and sometimes answer questions raised by other members of the Bills Committee. At times, the Member in charge would also participate in the discussions of the Bills Committee in a manner similar to other members of the Bills Committee.

14. At the meeting of the Bills Committee on University of Hong Kong (Amendment) Bill 2010 on 10 December 2010, the issue of the role of the Member in charge of the bill was raised. On that occasion, two Bills Committee members expressed the view that the Member in charge of the Bill should be

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<sup>6</sup> Rule 76(2) of RoP provides that "[t]he chairman of a Bills Committee shall be elected by the committee from among its members. The committee may also elect a deputy chairman. In the event of the temporary absence of the chairman or any deputy chairman, the committee may elect a chairman to act during such absence".

<sup>7</sup> The names of the proponent organizations of the Members' bills introduced since the First LegCo are shown in Appendix III.

responsible for explaining the bill to the Bills Committee, and the Member could invite his assistant or the representatives of the proponent organization of the bill to assist him in the scrutiny process. No dissenting view was expressed by other members of the Bills Committee on the issue at that meeting. Based on available records, apart from this occasion, the issue was not raised by any other Bills Committees.

### **CRoP's views**

15. Having regard to the functions of Bills Committees and the past experience of those Bills Committees formed to study Members' bills since the First LegCo, CRoP is of the view that the participation of the Member in charge of a bill as a *member* of the relevant Bills Committee generally would not give rise to conflict of interest or conflict of roles by virtue of the Member's capacity as the "Member in charge". CRoP therefore considers that the existing arrangement whereby the Member in charge of a bill is allowed to join the relevant Bills Committee to serve as a member should continue.

16. As to whether the Member in charge of a bill should serve as the Chairman or Deputy Chairman of the relevant Bills Committee, CRoP notes that apart from chairing meetings, the Chairman of a Bills Committee is also responsible for presenting the report of the Bills Committee to the House Committee, tabling and speaking on the report of the Bills Committee in Council, as well as moving Committee Stage amendments agreed by the Bills Committee on its behalf. The Deputy Chairman of a Bill Committee will chair the meeting(s) of the Bills Committee or take up any other responsibility of the Chairman, if the Chairman is not available or decides that he is unable to perform any such responsibility. Having regard to the role and responsibilities of the Chairman and Deputy Chairman of a Bills Committee, CRoP is of the view that there may be conflict of roles if the Member in charge serves as the Chairman or Deputy Chairman of the relevant Bills Committee. For example, the Member in charge may be or may be perceived as being unable to act in a fair manner in chairing meetings or in steering the Bills Committee's deliberations on opposing views or proposed Committee Stage amendments which he opposes.

17. CRoP however notes that notwithstanding the absence of any rule to prohibit the Member in charge of a bill to serve as the Chairman or Deputy Chairman of a Bills Committee, it has been the established practice since the introduction of Bills Committees in 1992 that the Member in charge of a bill

had never served as the Chairman or Deputy Chairman of the relevant Bills Committee<sup>8</sup>. CRoP takes the view that there is no need to formalize this practice into a written rule.

### **Advice sought**

18. The House Committee is invited to note the CRoP's views which are summarized below –

- (a) the existing arrangement whereby the Member in charge of a bill is allowed to join the relevant Bills Committee to serve as a member should continue; and
- (b) the established practice that the Member in charge of a bill will not serve as the Chairman or Deputy Chairman of the relevant Bills Committee should continue.

Council Business Division 4  
Legislative Council Secretariat  
6 May 2013

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<sup>8</sup> In all the Bills Committees formed to scrutinize Members' bills, the Members in charge of the bills did not stand for election as the Chairman or Deputy Chairman of the Bills Committees.

**Extracts from the minutes of the meeting of  
House Committee held on 26 November 2010**

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**(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)**

**University of Hong Kong (Amendment) Bill 2010**  
*(LC Paper No. LS 10/10-11)*

5. The Chairman said that the Bill introduced by Dr David LI sought to amend the University of Hong Kong Ordinance to rectify the role descriptions of the Court and the Council and to give effect to the adoption of new academic titles. The Panel on Education had been consulted on the legislative proposals at its meetings in June 2008 and June 2009, and members had raised various concerns.

6. Mr James TO said that Mr CHEUNG Man-kwong considered it necessary to form a Bills Committee to study the Bill.

7. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Ir Dr Raymond HO, Dr David LI, Mr James TO, Mr CHEUNG Man-kwong (as advised by Mr James TO), Ms Audrey EU, Dr PAN Pey-chyou and Miss Tanya CHAN.

8. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

9. Dr Margaret NG sought clarification on whether Dr David LI could join the Bills Committee as he was the Member in charge of the Bill.

10. Mr James TO said that in his view, Dr David LI could not join the Bills Committee. He elaborated that for bills introduced by the Administration, the Administration was responsible for explaining the bill to the relevant Bills Committee and assisting its scrutiny by the Bills Committee. As the Member in charge of the Bill, Dr David LI's role was similar to that of the Administration in respect of a Government's Bill. According to his recollection, when he himself introduced a Members' Bill in 1996, his role was to explain the bill to the relevant Bills Committee.

11. The Chairman said that the question of Dr David LI's capacity in the scrutiny of the Bill could be tackled by the Bills Committee.

12. Mr James TO said that as a matter of principle, Dr David LI, as the Member in charge of the Bill, should be responsible for explaining the bill to the Bills Committee. He was of the view that Dr LI should not be allowed to join the Bills Committee, and sought confirmation from the Legal Adviser ("LA") on whether his understanding was correct.

13. At the invitation of the Chairman, LA said that the Rules of Procedure ("RoP") had no provisions in this regard. There were occasions in the past where the Member introducing the bill had joined the relevant Bills Committee. One case in point was the City University of Hong Kong (Amendment) Bill 2006 introduced by Ir Dr Raymond HO.

14. Ir Dr Raymond HO said that as the former Chairman of the Council of the City University of Hong Kong ("CityU"), he had introduced the City University of Hong Kong (Amendment) Bill 2006 which sought to change the structure of the Council of CityU and the total number of Council members. He was a member of the relevant Bills Committee which was chaired by Ms Emily LAU.

15. Dr Margaret NG clarified that she had no intention of excluding any Members from joining the Bills Committee. She was only seeking clarification on the capacity of the Member introducing a bill during the scrutiny of the bill concerned. In view of the importance of the issue and given that RoP had no provisions in this regard, she suggested referring the matter to the Committee on Rules of Procedure ("CRoP") for consideration.

16. At the invitation of the Chairman, LA drew Members' attention to Rule 76(1A) of RoP which provided that the members of a Bills Committee should be those Members who signified membership in accordance with the procedural rules decided by the House Committee. LA added that the House Committee had not made any decision to forbid the Member introducing a Members' Bill to join the Bills Committee concerned.

17. Members agreed to refer the issue to CRoP for consideration.

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**Extract from "Information note on presentation of bills by Members of the Legislative Council" (LC Paper No. CB(3) 301/12-13)**

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**Procedure for presentation of bills by Members**

6. The procedure for presentation of bills by Members pursuant to the relevant legal provisions, RoP and the established practice is outlined below:

- (a) make the draft bill available in both official languages (*section 4 of Cap. 5 and Rule 50(4) of RoP*);
- (b) consult the relevant LegCo Panel on the legislative proposal or the draft bill (established practice);
- (c) obtain a certificate issued by the Law Draftsman (*Rule 51(1) and (2) of RoP*);
- (d) seek<sup>2</sup> the President's opinion in writing on whether the bill relates to any of the following matters:
  - (i) public expenditure,
  - (ii) political structure,
  - (iii) the operation of the Government, or
  - (iv) Government policies;

(*BL 74 and Rule 51(3) and (4) of RoP*)
- (e) if the President is of the opinion that:

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<sup>2</sup> By established practice, the Member may seek the President's opinion prior to the giving of notice of the intention to present a bill. The Member should provide the President with a copy of the bill, an explanatory memorandum and the Law Draftsman's certificate. The President's past rulings on bills intended to be presented by Members may be found on the LegCo web site ([http://www.legco.gov.hk/general/english/presdet/pre\\_rul.htm](http://www.legco.gov.hk/general/english/presdet/pre_rul.htm)).

- (i) the bill relates to (d)(i) or (ii) or (iii), the Member may not introduce the bill;
  - (ii) the bill relates to (d)(iv) only, proceed to (f); or
  - (iii) the bill does not relate to any of the matters in (d), proceed to (g) if the bill is a private bill<sup>3</sup>; or proceed to (h) if the bill is not a private bill as defined (to be referred to as a public bill below);
- (f) seek the written consent of the Chief Executive ("CE") in respect of the bill (*BL 74 and Rule 51(4) of RoP*),
- (i) if CE's written consent is not given, the Member may not introduce the bill; or
  - (ii) if CE's written consent is given, proceed to (g) if the bill is a private bill; or proceed to (h) if the bill is a public bill;
- (g) arrange for the bill to be published in two successive publications of the Gazette and the notice of the bill to be given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper (*Rule 51(6) of RoP*);
- (h) give notice to the Clerk to LegCo of the intention to present the bill to the Council (*Rule 51(1) of RoP*). The notice shall be accompanied by:
- (i) a copy of the bill,
  - (ii) an explanatory memorandum,
  - (iii) the Law Draftsman's certificate,

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<sup>3</sup> According to section 2 of the Private Bills Ordinance (Cap. 69), "private bill" means a bill which –

- (a) provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and
- (b) is not a Government measure.

- (iv) (if the bill is a private bill) a certificate signed by the Member stating that the gazettal and advertisement requirements in (g) have been fulfilled,
- (v) (if (e)(ii) is applicable) CE's written consent in respect of the bill, and
- (vi) (if the bill is to be presented in only one official language) a certificate stating that the Chief Executive-in-Council has directed under section 4(3) of Cap. 5 that the bill should be presented to LegCo in that language (*Rule 51(5) of RoP*).

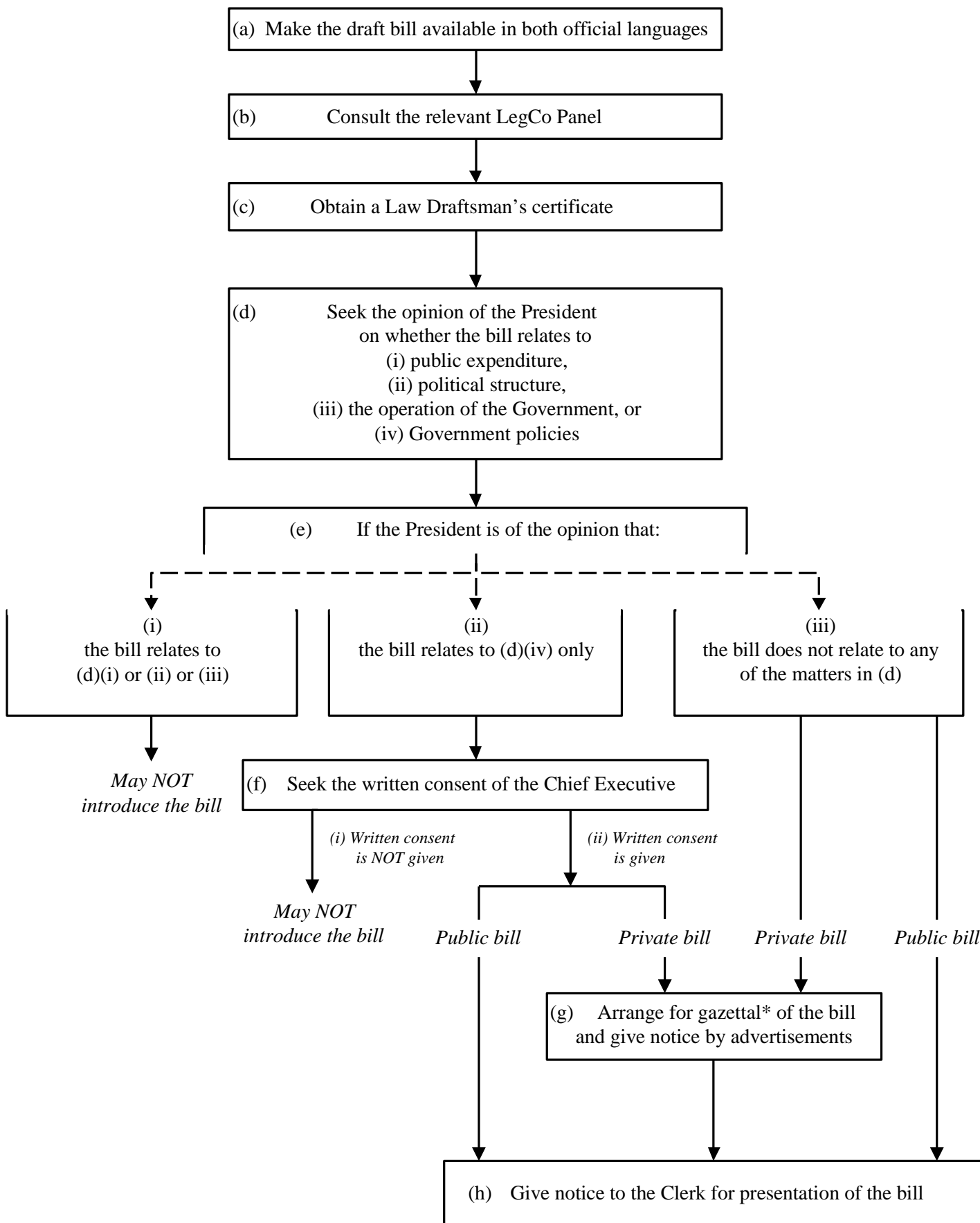
7. While gazettal of a private bill is to be arranged by the Member presenting it in accordance with in paragraph 6(g) above, gazettal of a public bill is to be arranged by the Clerk to LegCo upon receipt of the bill for presentation to the Council. To allow the Clerk sufficient time to arrange for gazettal of a public bill, the Member presenting such a bill is advised to give notice preferably not less than **12 clear days** before the day of the Council meeting at which the bill is to be first read.

8. After the Clerk has caused a copy of the bill and its explanatory memorandum to be sent to every Member, the bill shall be deemed to have been presented to the Council (*Rule 52(2) of RoP*).

9. A flow chart on presentation of bills by Members is in **Annex** for Members' reference.

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**Procedure for presentation of bills by Members**



\* Gazettal of a public bill is to be arranged by the Clerk after receipt of the bill for presentation to the Council

## Members' bills introduced since the First LegCo

No.	Title of Bill	Gazette date of Bill	Bills Committee formed	Member in charge of the bill	Proponent organization
1.	Alice Ho Miu Ling Nethersole Hospital Incorporation (Amendment) Bill 1999	12/2/1999	No	Dr Hon Eric LI	Alice Ho Miu Ling Nethersole Hospital Incorporation
2.	Order of Friars Minor in Hong Kong Incorporation Bill	13/8/1999	No	Hon Ambrose LAU	Order of Friars Minor in Hong Kong Incorporation
3.	Smoking (Public Health) (Amendment) Bill 2000	9/6/2000	See footnote <sup>1</sup>	Dr Hon LEONG Che-hung	(not applicable)
4.	Prior of the Order of Cistercians of the Strict Observance Incorporation (Amendment) Bill 2000	29/9/2000	No	Hon Ambrose LAU	Prior of the Order of Cistercians of the Strict Observance Incorporation
5.	Bank of China (Hong Kong) Limited (Merger) Bill	25/5/2001	No	Dr Hon David LI	Bank of China (Hong Kong) Limited
6.	Bank of East Asia, Limited Bill	1/6/2001	No	Hon NG Leung-sing	Bank of East Asia, Limited
7.	Bank of East Asia, Limited (Merger) Bill	23/11/2001	No	Hon NG Leung-sing	Bank of East Asia, Limited
8.	Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill	23/11/2001	No	Dr Hon David LI	Mizuho Corporate Bank, Ltd.
9.	CITIC Ka Wah Bank Limited (Merger) Bill	3/5/2002	No	Dr Hon David LI	CITIC Ka Wah Bank Limited

<sup>1</sup> At the meeting of the House Committee held on 16 June 2000, Members agreed that a Bills Committee should be formed to study the bill and the bill was then placed on the waiting list for allocation of a Bills Committee slot. The Bill lapsed at the end of the term of the First LegCo and no Bills Committee had been formed.

<b>No.</b>	<b>Title of Bill</b>	<b>Gazette date of Bill</b>	<b>Bills Committee formed</b>	<b>Member in charge of the bill</b>	<b>Proponent organization</b>
10.	Daughters of Mary Help of Christians Incorporation (Amendment) Bill 2002	8/11/2002	No	Hon Andrew WONG	Daughters of Mary Help of Christians Incorporation
11.	Dao Heng Bank Limited (Merger) Bill	30/1/2003	No	Dr Hon David LI	Dao Heng Bank Limited
12.	Bank of East Asia, Limited (Merger of Subsidiaries) Bill	14/2/2003	No	Hon NG Leung-sing	Bank of East Asia, Limited
13.	Council of Ling Liang World-wide Evangelistic Mission Hong Kong Ling Liang Church Incorporation (Amendment) Bill 2003	7/11/2003	No	Hon Kenneth TING	Council of the Ling Liang World-Wide Evangelistic Mission Hong Kong Ling Liang Church
14.	Standard Chartered Bank (Hong Kong) Limited (Merger) Bill	12/3/2004	No	Dr Hon David LI	Standard Chartered Bank (Hong Kong) Limited
15.	Professional Accountants (Amendment) Bill 2004	19/3/2004	Yes	Dr Hon Eric LI	Hong Kong Society of Accountants
16.	Wing Hang Bank, Limited (Merger) Bill	14/5/2004	No	Dr Hon David LI	Wing Hang Bank, Limited
17.	Federation of Hong Kong Industries (Amendment) Bill 2005	28/1/2005	No	Hon Andrew LEUNG	Federation of Hong Kong Industries
18.	Citibank (Hong Kong) Limited (Merger) Bill	11/3/2005	Yes	Dr Hon David LI	Citibank (Hong Kong) Limited
19.	Methodist Church, Hong Kong, Incorporation (Amendment) Bill 2005	22/4/2005	No	Hon LAU Chin-shek	Methodist Church, Hong Kong, Incorporation
20.	Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill	13/5/2005	No	Dr Hon David LI	Industrial and Commercial Bank of China (Asia) Limited
21.	Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006	19/5/2006	No	Hon Bernard CHAN	Hong Kong Society for the Protection of Children Incorporation
22.	City University of Hong Kong (Amendment) Bill 2006	25/8/2006	Yes	Ir Dr Hon Raymond HO	City University of Hong Kong
23.	The English Schools Foundation (Amendment) Bill 2007	20/4/2007	Yes	Hon Abraham SHEK	The English Schools Foundation

No.	Title of Bill	Gazette date of Bill	Bills Committee formed	Member in charge of the bill	Proponent organization
24.	The Chinese University of Hong Kong (Declaration of Morningside College and S.H. Ho College as Constituent Colleges) Bill	1/6/2007	No	Hon CHEUNG Man-kwong	The Chinese University of Hong Kong
25.	The Chinese University of Hong Kong (Declaration of C.W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill	21/12/2007	No	Hon CHEUNG Man-kwong	The Chinese University of Hong Kong
26.	Alice Ho Miu Ling Nethersole Charity Foundation Bill	1/2/2008	No	Hon Mrs Selina CHOW	Alice Ho Miu Ling Nethersole Hospital Incorporation
27.	Hong Kong University of Science and Technology (Amendment) Bill 2008	6/6/2008	No	Hon Abraham SHEK	The Hong Kong University of Science and Technology
28.	University of Hong Kong (Amendment) Bill 2010	25/6/2010	Yes	Dr Hon David LI	The University of Hong Kong
29.	The Hong Kong Polytechnic University (Amendment) Bill 2011	8/7/2011	Yes	Dr Hon LAM Tai-fai	The Hong Kong Polytechnic University
30.	Professional Accountants (Amendment) Bill 2012	4/5/2012	No	Hon Paul CHAN	Hong Kong Institute of Certified Public Accountants.